

## **REMARKS**

Claims 1, 2, 4,6 and 7 are in the application.

Claims 3, 5, 8, 9 and 10 stand withdrawn as directed to a non-elected species. In view of the amendments to the claims and the following remarks it is respectfully submitted that claim 1 is generic and allowable and it is requested that the species requirement be withdrawn.

In view of the objections to claims 6 and 7 the dependency of claim 6 has been changed to claim 4.

Claims 1, 2 and 4 have been rejected under 35 U.S.C. 103(a) as unpatentable over Gerold (U.S. 5,996,708) in view of Driggers (U.S. 4,825,548).

Claims 6-7 are rejected under 35 U.S.C. 103(a) as unpatentable over Gerold '708 as applied to claim 1 and further in view of Lepold (U.S. 6,241,594).

### **GEROLD 5,996,708**

The Gerold patent is directed to a percussion tool.

Gerold is relied upon as disclosing the applicants' auxiliary handle by the side handle 4. The description of the side handle 4 is brief, note column 3, lines 34-38, only indicating its location and that it projects sidewise from the housing.

There is no further description of the side handle. It is not spade shaped and does not include an actuated element within the plane of the auxiliary handle as in claim

1. Based on Gerold a person skilled in the art would appreciate the use of a handle found intermediate the ends of a boring and spaced outwardly and a short distance from the housing.

There is no explanation of the function of the side handle, at most it could be inferred that the side handles support the percussion tool, however, there is no further indication of their function.

#### DRIGGERS 4,825,548

Driggers discloses a vibration-damping control handle for a portable power tool. This reference is primarily directed to the vibration-damping of a rotary cutting tool such as a lawn edge trimmer or similar tool

The handle in Drigger does not project radially outwardly from the tool housing, instead it is mounted along a shaft 16 extending from the housing and between the housing and the trimmer.

The handle is not spade shaped, rather it is five sided with two angular sides or arms (50) connected to a collar 40 on the shaft 16. There is no actuator element

8 located within the plane of the auxiliary handle space between the arms 14a and the radially outwardly position of the cross arm 14b.

It is difficult to see how the handle in Driggers could be combined with Gerold for adjusting the position of the housing. The teaching in Driggers is to adjust the handle and to support and guide the motion of the shaft. There is no actuator element within the handle in Driggers which could be pressed by the operator for a releasing or locking operation.

The final rejection suggests that Driggers shows an actuator element "54a" spaced apart from the auxiliary handle arms when the element 54a (see Fig. 6) is one of the arms 50, 50 and 54 of the handle or handgrip.

Accordingly, it is respectfully submitted that there is nothing in Gerold or Driggers to suggest the arrangement of the handle and actuator element as set forth in the applicants' claims.

LEPOLD 6,241,594 b1

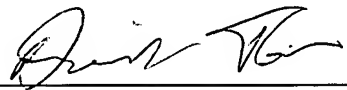
The Lepold patent discloses a hand machine tool adjustable front handle. This patent was issued June 5, 2001 after the subject application was filed in Germany, February 9, 2001.

It is questionable how Lepold could be combined with Gerold and Driggers, since there is nothing in any of the references to suggest the subject matter of applicants' claim 1 on which claims 6 and 7 depend.

There is nothing in Gerold, Driggers and Lepold to suggest the applicants' claimed tool. The references must suggest the applicants' claimed structure, the suggestion must be supplied by the references not by implying that they afford such suggestion.

Therefore, it is respectfully submitted that applicants' claims are allowable and such allowance is solicited.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 24, 2004.

